

HAZARDOUS WASTE USER CHARGE (HWUC) STAKEHOLDER WORKGROUP MEETING SUMMARY

January 26, 2012

Meeting Time and Location: 1:00-4:00 p.m., Rachel Carson Conference Room, Constitution Hall, Lansing, Michigan

Meeting Attendees: 13 stakeholders at table; 2 stakeholders on phone; 5 Department of Environmental Quality (DEQ), Resource Management Division (RMD), staff at table; 1 DEQ RMD staff on phone; and 7 invitees absent. Bill Lievense has become a member of the group.

Members received handouts: Handler Activity; Invoiced by year information; Manifest data; bar charts of Manifests Processed/Imports and Michigan Manifests/Quantity of Michigan and Imports/Total Manifests Compared to Invoiced Manifests/Invoices Collected/and Handler Contribution to Charges Collected; a Graph of Mean Fee Collected by Handler Class; Act 118 Program Scope/Inspections; TSD/LQG/SQG Inspections graph; Legislative Priorities; GPRA Baseline; HW Permit & CA FTE History; State vs. Federal; RCRA workplan commitments evaluation; and Program History and Workplan Expectations.

Introductions were made around the room. Liane Shekter Smith, Division Chief, DEQ, welcomed the workgroup and gave an overview of the presentations that will be heard to receive necessary data from a several DEQ staff.

At the last meeting the workgroup asked for information relative to the universe of generators. This information was provided.

The workgroup requested more details and a review of the Stakeholders' objective. Staff provided a review of the objective.

There was a discussion relative to the Universe of Handlers. A breakdown of the individual generator status categories as well as a review of the number of generators/shippers/receivers and quantities as of 12/31/2011 were provided. Manifest data was used as the basis for the count for the Liquid Industrial Waste references. The discussion included a review of the 2009 biennial report summary including the 2009 Used Oil biennial report. The workgroup was provided a breakdown of the handlers invoiced and collected by year which revealed the overall picture of each category and trends of both the Hazardous Waste Management program and Michigan's economy since 2002. It was noted that a few manifests may be double counted when a facility is a LQG and TSD combo. The workgroup asked for more details about the VLQG status. Staff replied that this category is for billing purposes only and its starting range is over 900,000 kgs of hazardous waste.

The discussion turned to the subject of manifests. Definitions of the manifests involved in the distributed chart were shared. Only hazardous waste manifests were included, no liquid industrial waste manifests were used. If the liquid industrial waste manifests were included the totals would show an approximate increase of three to four times the volume. Staff shared the quantity of tons represented by the hazardous waste manifests along with how many are managed in Michigan and shipped to all TSDs. Export and import figures were also reviewed.

The workgroup asked for an update on the topic of electronic signatures on manifests. Staff replied that the EManifest Program was put on hold due to a lack of funding after the pilot was completed. The program may be implemented one day but not in the near future.

Staff presented visual representation of Manifests Processed from 2000 through 2011 including the unique manifests. The manifests were impacted by the economy. There was a slight increase in the number of manifests processed in 2010 which was discussed. In 2010 TSD facilities had some issues that did boost the volume.

The workgroup was curious about any information staff may have that shows waste exports to Canada. Staff replied that Canadian waste was being tracked at one point but it has not been tracked for the past several years.

A question was raised about designing a mechanism to report the out of state generators. Staff shared that Michigan does invoice a percentage of the out of state generators whose waste enters Michigan. These invoices are created manually as there is no database to determine generator status so their invoices are based on the quantity of hazardous waste manifests. Approximately 70 out of state customers receive invoices annually. The workgroup wondered if the TSD facilities could implement a fee on the waste coming from out of Michigan. Members shared that treaters already pay on the backend. The workgroup asked if staff had information on what other states are doing on this subject and what their Legislative rules state on the importing of out of state waste and charges. It was agreed that at the next meeting there will a discussion on a few other states where information may be relative to Michigan. Staff will gather information and workgroup members are welcome to bring whatever information they may have in their offices.

The group turned its focus to discussing Imports reflected in Michigan Manifests from 2000 through 2010. Some members expected to see more of a difference since the allowance of entering more waste on a manifest during the past few years. The workgroup was in agreement that there is an opportunity for more revenue, from a volume perspective, that Michigan could potentially capture. Staff explained that our statute gives authority within Michigan's border. An

investigation into the authority to have trucks pay will be considered. It was clarified that the manifest fee on the user charge invoice is to process the manifest and not involved with inspections, etc. Staff stated that the user charge was created to replace funding that was lost and to support the Hazardous Waste Program. The user charge was designed to be fair and equitable and was to touch a broad range of customers. Back in 1998 Michigan printed its own manifests and the designation state sold them to anyone shipping into Michigan. The situation changed and evolved and Michigan lost the ability to capture exports. Several ideas were received from members as waste does come to a Michigan facility that is regulated and all ideas will be considered. Staff stated that all decisions resulting from our meetings will require legislative approval. Staff was asked the question on how much program support is given to the small facilities? Staff responded with inspection aspects that provide an idea of where the issues will arise. However small generators do not have the staff to be experts on waste streams. It is possible that every CESQGs registered in the database is not truly an active generator but companies may be leaving that status showing just in case a need arises in the future.

During the discussion of the quantity of Michigan hazardous waste and Imports an average of 100,000 manifests was calculated. When comparing the unique manifests to the imports the workgroup did recognize that many manifests are not being captured in the user charge billing system.

The workgroup found the information provided on the number of handlers from the years of 2002 through 2010 interesting as it clearly reflected a continuous decrease from a starting point of a little over 6,000 to just under 4,000 handlers. As a result the Invoices Collected during the same time period also reflected a continuous decrease.

The workgroup asked what the average LQG pays and the answer was \$400 with an average of one manifest a month.

The workgroup appreciated all the data and handouts provided by staff. Staff found the process helpful as well to review the trends that occurred.

A request was made to have the handouts posted on the link prior to the meeting. This would be very helpful for attendees on the phone so they can look at the items during the meeting. Staff will do that for future meetings.

Next was a discussion on Inspections. Staff went over the obligations that are a result of the RCRA Workplan with the EPA. It was shared that the TSD inspections take the most effort. The State statute states that TSDs are to be inspected quarterly. The EPA does not require as many inspections as Michigan's statute. The Michigan LQGs are inspected once every three years and district staff rotate the facilities unless problems occur to move that facility higher on the list. The EPA uses a five year schedule. While SQGs have no

federal requirement, Michigan's goal is to inspect them at least every six years. The EPA does not focus their efforts on SQGs as it is assumed that they are not a major concern to the environment. Michigan's viewpoint is that SQGs do have potential for problems affecting the environment and as a result they are included in the inspection schedule although they are a lower priority. There is no set schedule to inspect the CESQGs but if staff are in the area while on the way to inspect another facility then they will visit the CESQG facility. The year of 2009 stood out and members asked what the reason might have been. Staff explained that there were legal operating code reasons occurring during that time. The question was raised if the inspection is only provided by district inspection staff, or if technical staff are sometimes included. Technical staff are not included on inspections as a rule. Staff shared that federal inspections were not included in the information provided. If EPA would have been included, their focus has been on SW Michigan which would have increased the numbers in that region. The workgroup discussed Act 118 regarding Inspections and asked about the 19 TSDs receiving waste. The question was asked why just 19 TSDs are highlighted when there are approximately 65 in Michigan. Staff explained that if they have not completed clean closure, etc. then they remain on the list. Part Bs in 1980 have a mix of closed but inspected, clean closed with no inspection, etc. so the numbers vary depending on your question. Additional Staff may be asked to attend a future meeting and provide detailed information on the TSD universe. The mixed waste rule was briefly mentioned. Staff explained the change of TSD policy which allows for the storing waste for a year without categorizing a site as a TSD. Many sites remain on the list that were originally added under that method prior to the policy change. Not all TSDs are invoiced for a user charge; the legal operating codes determine the invoices. There is currently no exit clause in RCRA to no longer be considered a TSD. It is expected that by the end of our meetings that the workgroup will recommend a method as to how many TSDs should receive a user charge invoice.

The workgroup asked what the user charge rates were for each category. Staff provided the information.

Break – 10 minutes 1:30-1:40 p.m. Two members had to leave the meeting at the break. The members on the telephone did receive the meeting materials over the break.

It was decided to move the Financial Summary discussion to the next meeting.

A discussion the RCRA WorkPlan was next. RCRA is an instrument that identifies the hazardous and solid waste programs. When Michigan's Act 64 arrived to lay out state requirements it followed the RCRA instrument. The history of RCRA and CERCLA and how they affect the status of some TSDs was explored. Michigan's Act 307 arrival and how it added to the picture was explained. Additional history was provided on federal amendments to RCRA. Subpart S regulation proposals were also explained. Staff shared that NCAPS

was EPA's tool to evaluate significance of Part A and work required. The process and goals were described. Staff talked about many changes to the hazardous waste regulations and how they fit with the EPA including EIs established for human exposures to be control and ground water controls. Michigan's 1994 Act 451 was mentioned as well as Part 201 and its amendments. The Corrective Action program was established when Michigan was authorized by the EPA in 1996. Staff explained the program in more detail including the MOU between Michigan and the EPA in 2000. Michigan took over biennial reporting from the EPA in 2000. Then in 2001 Michigan given authority to issue Site IDs by Act 165. Following that authority, the user charge was initiated and the first Invoices were to capture 2002 activity and billed in the winter of 2003.

A number of components grew from the simple beginnings. 40 TSDs were determined to be high priority end caps. Over the years Facility numbers change and work loads change. The workgroup asked about any additional funding received as responsibilities increased. Staff shared that in 2001 there was a base grant increase but it was not enough to cover 100 percent. No other grant increases have arrived since 2001.

A discussion followed on how the hazardous waste program has grown over the years and yet the funding has remained level. It was agreed that an exit from RCRA is a flaw of the system and the EPA is the agency to correct that issue.

The GPRA 2006 baseline universe was explained and that Michigan is lead on Corrective Action but not Interim which remains a federal lead. Controls in Place were also explained as they are an important milestone. Michigan's Permit goals are at 90 percent. Michigan does have an option with post closure plans (no user charge) where the facility does not need a license. More history was provided on the Part 201 redesign and MOU update. The situation with the General Motor sites was discussed as Michigan is the lead for a majority of the sites. The Fiscal Year 2012 Workplan was briefly discussed as the EPA is asking Michigan to add 121 facilities to the 2020 completion schedule.

A review of HW Permit and Corrective Action FTE History was provided which included C&E staff, lab staff – the total program is reflected. Staff shared that current Vacancies are waiting based on funding limits. Members asked how EPA elements affect the user charge fee. Staff replied that a base level of effort is required that other pieces are built upon to have a core program. Members also asked about the SEEP aspect in regard to the data just provided. Staff responded that the program is interrelated and one piece cannot be discussed in depth without knowing the other pieces so all parts will remain in synch. Members then asked if the Hazardous waste fee supports everything. Staff hopes to show the whole program so the workgroup will understand the entire picture of the program. Staff added that permit fees may also need to be reviewed and perhaps increased for revenue source purposes.

It was brought to the workgroup's attention that in 2006 SEEPs are included in the staff count. And that the 2002 early out is shown, and the 2011 early out is reflected as well. As a result 53 represents conservative planning and the Division did not refill positions. FY 12 brought additional funding to assist (bailout) through FY13. A couple of the vacancies are currently in the process of being filling. Members asked how this interacts with RD 201 staff. Staff replied that the programs are kept in synch, as many cleanups are done under Part 111. Staff added that the cleanup Corrective Action work meets the federal standards as well as the 201 aspects.

State vs. Federal Program

State and federal hazardous waste management programs was discussed along with how an item is determined to be a hazardous waste. Michigan has state specific waste codes. Michigan makes an effort to update its rules and over time some codes have been missed in previous eliminations so they are now being proposed for deletion such as acid codes may be candidates for removal. Many chemicals are no longer used. The list can be emailed to anyone interested. The workgroup wondered if some generators are not reporting certain codes as they are not included on their lists. Staff will run queries and see if some codes never appear.

Part 3 – Michigan requires manifests be submitted. Michigan is more stringent on not allowing containment buildings.

Part 4 – Michigan is a member of the Alliance. A brief history of the Alliance was provided.

Part 5 – A discussion on the new procedure regarding licenses revealed that while a construction permit is no longer needed the name remains in the rules. Site Review Boards have been eliminated. Michigan mirrors the federal government although the state requires more stringent monitoring requirements.

Part 6 – TSDFs comply with requirements listed so all are under the same standards. Now interim standard is put on facilities near clean closure where 15 years ago interim standards were for facilities just beginning the process. The EPA requires final closure notification where Michigan also does partials in addition to final closures. Regarding Landfill requirements, Michigan exceeds the EPA requirements.

Part 7 – Michigan has different methods than the EPA. Michigan has begun to request funding up front for some remediation work while the EPA waits until later in the process to require funding.

The fiscal year 12 RRCA workplan evaluation was reviewed. RASPR continues to be maintained. C&E monitoring does have some differences from EPA as

Michigan is more stringent in this aspect. Overall there are not many statutory boundaries to worry about. Manifests have rules on completing but not on how the manifest is to be submitted to the state. Michigan has no authority for process delisting waste. There is no mandate for Michigan to give assistance to the public on characterizing waste but there is a huge need so assistance is provided. It was mentioned that while Biennial Reports does not have a mandate to provide the forms and data that Michigan includes it for our customers. The question was asked if lab staff used was internal or external to the DEQ and if they were included in the staff counts. Staff explained that the lab is shared with all the Divisions and its staff was not included in the counts. The workgroup asked if the lab is considered part of the allocated expense. Staff answered Yes. Michigan does more work for monitoring than the EPA requires. Michigan staff do CAMM and post closures caps inspections too. The workgroup asked if there are fees for some of the monitoring. Staff replied that there are Operating license and user charge fees. It was clarified that Administrative Controls is an EPA term for enforceable documents. It was explained that the Transporter registration/permit; the user charge administration; and the lab coordination are not a federal requirements. Most public participation is done through EPA guidance documents.

Members wishes to see data on TSDs. Staff will create a cheat sheet on the TSD universe. The goal is to identify an equitable way to charge those fees.

An update was given to the workgroup on Andy Such and his recent knee surgery. He is doing well and will receive a handout package of this meeting.

The Regulatory Reinvention and Financials discussions will be presented at the next meeting. Out of state information relative to what other states do, their charges and program scope will be shared at the next meeting too. If possible Ontario information will be included.

Staff will get materials posted on the web site prior to the February 16 meeting.

The next meeting was agreed to be set for February 16, 2012, starting at 1:00 p.m. in a yet to be determined conference room, Constitution Hall, Lansing. If a conference is not available in Constitution Hall then an off site room will be considered. The ability to conference call into the meeting will be made available.